"pure" theory of jurisdiction and that there are other considerations which are relevant. It must not be assumed that when the legislature empowers an inferior tribunal to inquire into certain facts it intends that the tribunal's conclusions on every one of those facts shall be unimpeachable. The supervisory jurisdiction exercised by superior courts over inferior tribunals has been of particular constitutional importance in relation to administrative tribunals, and it could not have been effective except on the hypothesis that certain of the questions committed to an inferior tribunal demarcated the limits of its jurisdiction and that the decisions of the tribunal on those questions were reviewable otherwise than on appeal. The "pure" theory would have reduced jurisdictional control almost to vanishing point. (See *Dr. de Smith* at pages 66 *et seq*).

It is also argued that a practical construction put upon a doubtful or ambiguous statute by the officers of the executive department who are charged with its execution, if long acted upon and generally acquiesced in, is regarded as strong evidence of the true meaning of the law, and, although it is not binding upon the courts, they will not interpret the law differently, unless there are weighty reasons for so doing.

In my opinion it is not a question of the council having misconstrued the By-Laws or the Ordinance. In my opinion the natural and reasonable meaning of the relevant sections and By-Laws is abundantly clear. Nowhere in the respondents' affidavit do they allege that the meaning of any of the sections of the Ordinance or the By-Laws is doubtful or ambiguous. They have said that they are relying on practice, "it has been done before". The necessary ingredients to support the theory of executive construction are not present in this case.

The breaches of the By-Laws to which I have referred are breaches which, as I have already indicated, were or should have been clearly apparent to anyone having even a rudimentary working knowledge of the Ordinance and the By-Laws. On receipt of the site and building plans, therefore, the council should have returned them to the developers informing them of the respects in which they did not comply with the By-Laws and informing them that if they wished the council to modify or waive those breaches then they should make an application as indicated in section 144A for the consideration of the council. The council could then have followed the procedure indicated in section 144A and if they thought fit approved the proposed modification or waiver of those By-Laws, after having regard to the representations in writing of the owners of any adjoining premises. The approval of the plans containing the breaches of the By-Laws referred to without carrying out the procedure laid down in section 144A constitutes in my opinion an act or acts by the council in excess of its jurisdiction.

It has been argued that as *certiorari* is a discretionary remedy the court's discretion should be exercised in favour of the respondent on the ground that more damage would be done by granting the application than by refusing it, that the infringements of the By-Laws are minimal in character and that in any event the applicant has suffered no damage and will suffer no damage by the implementation of the decision of the council which is complained of.

I do not think more damage will be done by granting the application than by refusing it. Maybe the developers will have to modify their plans to comply with the provisions of the Ordinance and the By-Laws but as the infringements which have been proved only affect the Type A houses such modification does not appear to present an insuperable obstacle.

I do not think that there is any doubt that the development of the land in question immediately adjacent to the applicant's land otherwise than in compliance with the Ordinance and the By-Laws will affect that land and its value and in my opinion the applicant is entitled to insist that the provisions of the Ordinance and the By-Laws are strictly complied with.

There will be an order in terms of the motion. The applicant's costs to be taxed and paid by the respondents.

I will hear argument as to the costs of the developers.

Order in terms.

Solicitors: *Sharma & Co.; Lim Ewe Hock; Tan Lye Huat & Co.*

TAN BENG SIEW v. CHOO ENG CHOON

[F.C. (Wee Chong Jin C.J. (Singapore), Wylie C.J. (Borneo) and Tan Ah Tah F.J.) October 19, 1964]

[Singapore — Federal Court Civil Appeal No. 93 of 1963]

Limitation Ordinance, 1959, ss. 9 & 18 — Adverse possession — Unequivocal conduct of trespasser.

Land — Long adverse possession — Title to.

The appellant the trustee of the estate of Tan Say Hin deceased claimed possession of a piece of land. The respondent resisted the claim and counterclaimed for a declaration that he was entitled to the piece of land by virtue of long adverse possession. He had gone into possession of the land without the permission of the owner and had fenced the land and barred all access to it by means of a fence around it and a locked gate and had continued to so possess it for twelve years and upwards on the facts,

Held: the true owner's right and title to the land was extinguished by virtue of the Limitation Ordinance.

Cases referred to:—

(1) *Leigh* v. *Jack* (1880) 5 Ex.D. 264.

(2) *William Brothers Direct Supply Ltd.* v. *Raftery* [1958] 1 Q.B. 159.

(3) *Littledale* v. *Liverpool College* [1900] 1 Ch. 19.

FEDERAL COURT.

Lim Teong Quee for the appellant.

F. B. de Souza for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (Singapore): The appellant Tan Beng Siew is the present trustee of the estate of Tan Say Hin deceased who died intestate in Singapore on the 17th April 1888 seised of a piece of land (hereinafter referred to as "the said land") known as Lot 192 of Mukim XVII containing an area of 2 Roods 29 Poles for an estate in fee simple. The appellant was appointed trustee by an order of court dated 8th September 1961 and as trustee he commenced an action against the respondent in the High Court in Singapore claiming *inter alia* a declaration that he is entitled to the said land for an estate in fee simple subject to the trusts arising upon the death of Tan Say Hin deceased and claiming possession of the said land and of the rents income and profits thereof. The respondent resisted these claims and counterclaimed *inter alia* for a declaration that he is entitled to a portion of the said land (hereinafter referred to as the "disputed portion") estimated at an area of 23,400 square feet and to possession thereof by virtue of long adverse possession and alleging that the appellant's claim is barred by section 9 of the Limitation Ordinance 1959 and his right and title (if any) to the portion claimed by the respondent were extinguished by virtue of section 18 of the said Ordinance.

According to a plan which was put in as an exhibit (P2) at the trial the said land is a rectangular piece of land approximately 100 feet by 300 feet with a road frontage abutting Boon Teck Road of approximately 100 feet. The respondent claims that he had caused a zinc fence to be put up in 1942 fencing off the disputed portion. His evidence is that in 1941 he was allowed by a customer of a business which he was carrying on at 22 Rochore Canal Road to store tyres on the said land and he accordingly did so. Good tyres were stored by him in a shed which he caused to be erected on the land and the rest all over the disputed portion. In 1942 he engaged someone to erect a fence fencing off the portion he now claims. Access to the fenced-off portion was by way of a gate which could be locked. He continued to occupy the land as a store until 1958 when he cut down trees and levelled the land and in July 1958 started building 10 houses which were eventually completed in February 1959. All these acts were on the disputed portion. The buildings were erected without plans being submitted to the authorities. Evidence was also given by the contractor who erected the fence in 1942 who said that when he was erecting this fence there was a shed within the portion to be fenced in by him. Another witness also gave evidence for the respondent. He said that he had bought tyres from the respondent and had taken delivery for them from a shed at Boon Teck Road access to which was through a gate and that there was a zinc fence at the place he went to.

The appellant's evidence was that he first started to manage the said land about 35 years ago. He first went on the land in the year 1929 and the land had coconut trees and was farmed. In 1942 he visited the land and again in 1943 and there was no fence on it. Right up to the year 1958 there was no fence surrounding the portion now claimed by the respondent. On a part of the said land was a hut numbered 3-1 Boon Teck Road which was occupied by one Low Siak Kee as tenant before 1929 paying a rent of $18 a year and that from 1929 the tenant continued to pay him this rent. The tenant while being tenant only of the hut farmed the said land and collected the fruits from the coconut trees on it. The appellant paid the assessment in respect of the whole of the said land. In September 1958 the respondent was introduced to him by the tenant and on introduction asked for a lease of the property in order that the respondent could erect some buildings on it. The appellant agreed to grant him a lease for 25 to 30 years if building plans were approved by the authorities. Some time in the middle of September 1958 he saw the respondent's men cutting down all the coconut trees and clearing the tapioca and farmed land on the land and when he saw the respondent he was informed that no approval had yet been obtained. The next occasion he saw the respondent was on the 15th October 1958 when he went to see the respondent at No. 20 Rochore Canal Road to find out if the approval had been granted. He had by then seen 8 houses completed on the land and 2 more houses in the process of being built. The respondent could not show him the necessary approval and was told to either obtain the approval or demolish the houses and quit the land which request by the appellant was ignored. However he took no action against the respondent until 1961 when he instructed his present solicitors to serve a notice on the respondent requiring him to vacate the land forthwith. The tenant and another witness who occupied another hut on the said land gave similar evidence at the trial. The respondent denied ever having entered into any negotiations or ever having seen or met the appellant until after the commencement of the present action.

The learned trial judge rejected the evidence of the appellant and his witnesses and accepted the evidence of the respondent and his witnesses and found that the respondent remained in unchallenged occupation of a substantial part of the portion claimed by him. He found the appellant "a most unimpressive witness who was caught out in a blatant lie...." and that the tenant was old and doddery and completely "clueless" with a bad memory and under the influence of the other witness who did not impress him as being either accurate or truthful. He accepted the evidence that the zinc fence was put up by the respondent though he did not accept the evidence as to the actual location of the fence and he also accepted the evidence that the respondent erected a shed and used part of the said land as a store for tyres from 1941 onwards. His findings are contained in his additional grounds of decision as follows:—

"I accepted the evidence of the defendant and his witnesses that the defendant did use part of the disputed land as a store for tyres from 1941 but did not consider that he had established occupation to the extent claimed i.e. to the extreme right hand side of the disputed land bordering on the house No. 3-1 Boon Teck Road. There were a few minor discrepancies as between witnesses which were not however so glaring as to cause me to hesitate over accepting the defendant's story as being substantially true. He called a contractor who put up a zinc fence around the disputed land. I accepted his evidence though not as to the exact situation of the fence on the right hand side. It is difficult to be precise in these matters after more than 21 years but I am prepared to and do believe that the defendant remained in unchallenged occupation of the left hand half at least of the disputed land on which he erected buildings, albeit without authority, in 1958. It may well be that there was piece of no man's land between No. 3-1 Boon Teck Road and the tyre-store. I see no reason however for not accepting the story that the defendant 'built himself in on that part at least of the disputed land to the left of the plank bridge along Boon Teck Road."

Counsel for the appellant urged us to reject the trial judge's findings as to the use of the disputed portion as a store for tyres in 1941, as to the erection of the shed and as to the erection of the zinc fence on the ground that there was no sufficient or reliable evidence in support of these findings. That contention I am unable to uphold on principles as to the duty of an appellate court which have been so well established as to need no repetition. There was plainly ample evidence for the trial judge to arrive at these findings.

The same observations apply to the contention of counsel for the appellant on the subject of the negotiations for a lease for the whole of the said land. The trial judge rejected the evidence of the appellant and his witnesses relating to these negotiations and on his view of the credibility of the appellant and his witnesses this court unless it can be clearly shown that this finding was plainly wrong will not interfere. There was some documentary evidence on this aspect of the case but this evidence in the form of a document, relating to the hut 3-1 Boon Teck Road occupied by the tenant of the appellant does not concern any part of the disputed portion and is not inconsistent with the respondent's claim to adverse possession of the disputed portion.

So far as the law is concerned the authorities cited by the counsel for the appellant are clearly not applicable to the facts and circumstances of the present case. It seems to me that the trial judge having found that the respondent had gone into possession of land without any permission from the true owner and in relation to that land had performed acts such as fencing the land and barring all access to it by means of a fence around it and a locked gate and had continued to so possess it for 12 years and upwards and in the process had erected houses on it, it follows by virtue of the Limitation Ordinance that the true owner's right and title to that land has been extinguished.

For these reasons I am of the opinion that this appeal should be dismissed with costs.

Wylie C.J. (Borneo): The findings of the trial judge are not as clear as they might be, but I understand him to have found adverse occupation of at least half of the disputed land and that counsel have now agreed on a boundary line that would give effect to this judgment.

The judge has also found that a zinc fence was erected on respondent's order. Although he did not accept the contractor's evidence as to the exact location of that fence, he found that the fence was erected "around the disputed land" and I conclude that it therefore included at least that part of the land which would fall on respondent's side of what is now the agreed line. The judge has also found that the respondent erected a shed and used part of the disputed land for the storage of tyres and there is no dispute that, in 1958, respondent erected houses on the disputed land.

As against these findings, the judge apparently found no acceptable evidence of any acts of ownership on the part of the appellant applicable clearly to the disputed land. He has, for what he has shown to be good reason, concluded that the appellant committed deliberate perjury and therefore has disbelieved his evidence as to negotiations between him and respondent in regard to the erection of houses on the disputed land. If there were any such negotiations, as might be indicated by the document signed by the tenant (Exhibit P.8) they clearly related to the land on which the house at 3-1 Boon Teck Road was erected, that is, land outside the disputed land. Obviously, no person of ordinary intelligence would incur the expense of erecting houses on land concerning which he

has not yet succeeded "in leasing the land from the landlord" — to use the language of the document.

The appellant also relied on the fact that he and his predecessor in title had paid certain assessment rates. Receipts were produced for the years 1925 and 1961, but, as the judge points out, these relate only to the premises described as 3-1 Boon Teck Road, where the tenant lived, and do not necessarily include any of the disputed land. There is therefore no need to consider the somewhat doubtful proposition that mere payment of rates by the former owner would suffice to displace such acts of possession as fencing in the land and using it for business purposes, adversely to the title of the true owner.

The slight evidence of the gathering of coconuts on the disputed land by the appellant's tenant could not be accepted by the judge for the reason that the principal witness on this point, the tenant himself, was so old as to be completely unreliable. The record of this witness' evidence completely bears out the judge's conclusions as to his reliability.

It is true that the judge also stated that neither side impressed him by its evidence. In the context in which that statement has been made, I conclude that the judge is referring to the evidence as to what part of the land was occupied by respondent. For he continues that "the truth lies halfway between the two stories" and then proceeds to discuss where the boundary line should fall. It is clear from the next paragraph of his judgment that he does accept the evidence of respondent and his witnesses as to the use to which respondent put the land and it is equally clear from the additional grounds that he accepted the evidence that respondent caused a fence to be erected.

I can see no reason for interfering with the judge's conclusions and findings on the evidence. It follows that those grounds of appeal relating to the facts cannot succeed.

There was no dispute as to the law applicable. For the appellant, reference was made to authorities which it was submitted, showed that the nature of the property must be taken into account. Those authorities were *Leigh* v. *Jack*,[1] *William Brothers Direct Supply Ltd.* v. *Raftery*,[2] and *Littledale* v. *Liverpool College*.[3] These were all cases in which the person claiming adverse possession had, by conveyance or lease, obtained possession of adjoining land and had made certain use of the disputed land. In each case, it was held that the acts of the claimant were not such as to dispossess the legal owners in the circumstances, which, of course, included the nature of the property and the use to which the disputed land was intended to be put. The basis of these cases is that the acts of the intruder may be equivocal because of the manner in which he used the disputed land or because he may have been merely exercising rights he already possessed. For that reason, it may not be reasonable to find that the intruder has in fact dispossessed the true owner.

This reasoning has no application to the present case. There can be nothing equivocal about the conduct of a stranger going on to land as a trespasser and performing acts adverse to the possession and title of the true owner to such an extent as to deprive the true owner entirely of possession, or entry, or use. For that is the effect of the act of the respondent in erecting a zinc fence round the land and barring access by means of a locked gate. There can be no need to consider the nature of the property if the acts of a complete stranger are such as to place himself in exclusive possession and deprive the owner of all use of his land.

It follows that this appeal cannot succeed on any questions of law that have been raised.

I would dismiss this appeal with costs to the respondent.

Tan Ah Tah F.J.: I agree that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Braddell Bros.; de Souza & de Souza.*

BUJANG JOHNY v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.C.) October 26, 1964]

[Sibu — Criminal Appeal No. CA/13 of 1964]

Criminal Procedure — Conviction on separate charges — Manner of sentencing.

Forests Ordinance (Sarawak Cap. 126), ss. 21(c) & (e) and 79 — Convictions — Sentence — Jurisdiction.

The appellant was charged with two offences under section 21(c) and (e)* of the Forests Ordinance. He was convicted on these charges on his own plea and the magistrate in passing sentence merely stated that he sentenced the appellants tc 4 weeks' imprisonment. On appeal against sentence,

Held: (1) the sentence of 4 weeks was appropriate in view of the large number of trees cut down in an area reserved for research;

(2) it was wrong for the magistrate not to pass separate sentence on each charge;

*Section 21(c) and (e) of the Forest Ordinance reads:

"21. Subject to the provisions of section 23, no person shall in a forest reserve —

.....

(c) fell, cut, ring, mark, lop or tap any tree, or injure by fire or otherwise any tree or timber;

.....

(e) quarry stone, burn lime or charcoal or search for, collect or remove any forest produce or minerals."